

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CALEB L. MCGILLVARY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

No. 25cv1497 (EP)

MEMORANDUM ORDER

PADIN, District Judge.

Pro se Plaintiff Caleb L. McGillvary’s (“McGillvary”) Motion for Leave to Appeal *in forma pauperis* (“IFP”). D.E. 10.

McGillvary initiated this action by filing a civil complaint along with an application to proceed IFP under 28 U.S.C. § 1915. D.E. 1 (“Complaint” or “Compl.”); D.E. 4 (“IFP Application” or “IFP App.”) The Court granted McGillvary’s IFP Application and dismissed the Complaint for lack of jurisdiction.¹ McGillvary has now filed a notice of appeal of the Court’s dismissal of his Complaint, along with the present motion seeking to proceed IFP on appeal. D.E. 9; D.E. 10.

Pursuant to Federal Rule of Appellate Procedure 24(a)(3), a party who has been permitted to proceed IFP in the district court may continue to do so on appeal without further authorization. IFP status continues on appeal unless the district court certifies that the appeal is not taken in good faith or finds that the party is otherwise not entitled to proceed IFP. *Id.* In determining whether

¹ The Court erroneously referred to McGillvary’s IFP Application as having been docketed at Docket Entry 3. D.E. 7.

an appeal is taken in good faith, courts must assess whether the appeal presents any non-frivolous issue. *Coppedge v. United States*, 369 U.S. 438, 445 (1962).


Here, the Court finds no basis to conclude that McGillvary's appeal is taken in bad faith. Further, the Court does not find that McGillvary is otherwise ineligible to proceed IFP on his appeal. Consequently, pursuant to Rule 24(a)(3), McGillvary's previously granted IFP status continues automatically on appeal. Because McGillvary's IFP status continues, the pending motion seeking permission to proceed IFP on appeal is unnecessary and must be DENIED AS MOOT.

Accordingly,

IT IS, on this 28th day of May 2025,

ORDERED that McGillvary's motion to proceed IFP on appeal, D.E. 10, is **DENIED** as **MOOT**; and it is further

ORDERED that McGillvary's IFP status continues on appeal pursuant to Federal Rule of Appellate Procedure 24(a)(3).



Evelyn Padin, U.S.D.J.